Supreme Court, U.S.
FILED
SEP 29 2008
OFFICE OF THE CLERK

No. 08-___ 08-417

IN THE

Supreme Court of the United States

ROBERT KOWELL,
Petitioner,

v.

JAMES H. DONELL, RECEIVER FOR J.T. WALLENBROCK & ASSOCIATES AND CITADEL CAPITAL MANAGEMENT GROUP INC.,
Respondents.

On Appeal to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

RICHARD D. ACKERMAN *
ACKERMAN, COWLES & ASSOCIATES
29975 Technology Drive
Suite 101
Murrieta, CA 92563
(951) 308-6454

* Counsel of Record

Attorney for Petitioner

September 29, 2008

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

QUESTIONS PRESENTED FOR REVIEW

1. Does Due Process require a uniform claim limitations period with respect to any actions by a United States District Court receiver to disgorge gains/profits made on interstate securities by an innocent investor?

2. Should varying state laws concerning fraudulent transfers be preempted by federal securities laws in order to provide for a predictable and uniform limitations period which treats innocent investors and creditors equally for purposes of recovery? Otherwise stated, should this Court's reasoning in *Lampf, Pleva, Lipkind, Prupis, & Petigrow v. Gilbertson*, 501 U.S. 350 (1991) be extended to cover all interstate securities transactions, including *Ponzi* schemes, covered by Rule 10(b) of the Securities Exchange Act of 1934?

3. In calculating disgorgement of 'profits'/damages in a *Ponzi* scheme, is an innocent investor entitled to offsets for any acquisition, administrative, or holding costs associated with the securities (i.e., taxes paid on 'profits,' legal fees, interest on capitalization loans)?

LIST OF ALL PARTIES

The Petitioner is Robert Kowell.

The complete list of the Respondents is as follows: James H. Donell, Receiver for J.T. Wallenbrock & Associates and Citadel Capital Management Group, Inc.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
LIST OF ALL PARTIES.....	ii
TABLE OF AUTHORITIES.....	v
CITATION TO OPINIONS AND ORDERS ENTERED IN THE CASE.....	1
STATEMENT OF JURISDICTIONAL BASIS...	2
CONSTITUTIONAL OR OTHER PROVISIONS INVOLVED IN CASE	2
STATEMENT OF THE CASE	5
ARGUMENT FOR REVIEW.....	8
I. DUE PROCESS REQUIRES UNIFORMITY OF LAW WITH RESPECT TO INTERSTATE SECURITIES TRANSACTIONS WHERE RECOVERY IS SOUGHT AGAINST INNOCENT INVESTORS WHO MAY HAVE MADE PREVIOUS PROFITS ON THE AFFECTED SECURITIES	8
II. IN ORDER TO PRESERVE JUDICIAL ECONOMY AND PREDICTABILITY, STATE FRAUDULENT TRANSFERS LAWS SHOULD BE PREEMPTED BY A UNIFORM PERIOD OF LIMITATIONS FOR RECOVERY CLAIMS BY A RECEIVER	11
III. THE MEASURE OF DISGORGEMENT/RESTITUTION OUGHT TO BE UNIFORM AGAINST INTERSTATE SECURITIES INVESTORS.....	13
CONCLUSION	15

TABLE OF CONTENTS—Continued

APPENDICES Page

A. Ninth Circuit Opinion 1a

B. Judgment of the District Court..... 31a

C. Order of the District Court 33a

TABLE OF AUTHORITIES

CASES Page

American Pipe & Construction Co. v. Utah, 414 U.S. 538 (1974) 9
Auto Workers v. Hoosier Cardinal Corp., 383 U.S. 696 (1966) 9
Bateman Eichler, Hill Richards, Inc. v. Berner, 472 U.S. 299 (1985) 12
Borgfeldt v. Curry, 25 Cal.App. 624 (1914) . 13
Chichester v. Mason, 43 Cal.App.2d 577 (1941) 13
Donell v. Kowell, 533 F.3d 762 (9th Cir. 2008) ..... *passim*
Ernst & Ernst v. Hochfelder, 425 U.S. 185 (1976) 9
Harrison v. Dean Witter Reynolds, 79 F.3d 609 (7th Cir. 1996) 12
Herman & MacLean v. Huddleston, 459 U.S. 375 (1983) 9
Holmberg v. Armbrecht, 327 U.S. 392 (1946) 9
Lampf, Pleva, Likpkind, Prupis & Petigrow v. Gilbertson, 501 U.S. 350 (1991) 6, 7, 9, 11
Livid Holdings Ltd., v. Salomon Smith Barney, Inc., 416 F.3d 940 (9th Cir. 2005) 11-12
Montalvo v. Spirit Airlines, 508 F.3d 464 (9th Cir. 2007) 12, 14
Norris v. Wirtz, 818 F.2d 1329 (7th Cir.), cert. denied, 484 U.S. 943 (1987) 10
SEC v. J.T. Wallenbrock & Assoc., 313 F.3d 532 (9th Cir. 2002) 1, 8
SEC v. J.T. Wallenbrock & Assoc., 440 F. 3d 1109 (9th Cir. 2006) 2

TABLE OF AUTHORITIES—Continued

CASES	Page
Teumer v. General Motors Corp., 34 F.3d 542 (7th Cir. 1994)	10
West Covina v. Perkins, 525 U.S. 234 (1999)	8
CONSTITUTIONAL PROVISIONS	
United States Constitution - Fifth Amendment	8
United States Constitution - Fourteenth Amendment, §1	2, 8
STATUTES	
15 U.S.C. §78aa	2
15 U.S.C. §544	10
28 U.S.C. §1254	2
28 U.S.C. §1291	3
28 U.S.C. §1292	3
28 U.S.C. §1294	3
28 U.S.C. §1332	4
28 U.S.C. §1367	3
Federal Rules of Civil Procedure, Rule 14	4
Federal Rules of Civil Procedure, Rule 19	4
Federal Rules of Civil Procedure, Rule 20	4
Federal Rules of Civil Procedure, Rule 24	4
California Civil Code §3439.04(a)	14
California Civil Code §3439.04(b)	14
LEGISLATIVE MATERIALS	
Securities Exchange Act of 1934, Rule 10(b)	8, 12
California Uniform Fraudulent Transfers Act (UFTA)	10, 13, 14
78 Congressional Record 8200 (1934)	11

TABLE OF AUTHORITIES—Continued

MISCELLANEOUS

Page

Naheem, Guahar (2006), The Application of Federal Common Law to Overcome Conflicting State Laws in the Supplemental Disgorgement Proceedings of an SEC Appointed Receiver, Seton Hall Circuit Review (Vol. 3, No. 1, pp. 32-70) 7

Sabino, Anthony Michael (1992), A Statutory Beacon or a Relighted Lampf? The Constitutional Crisis of the New Limitary Period for Federal Securities Law Actions, 28 TULSA Law Journal 7

IN THE

Supreme Court of the United States

No. 08-___

ROBERT KOWELL,
Petitioner,

v.

JAMES H. DONELL, RECEIVER FOR
J.T. WALLENBROCK & ASSOCIATES AND CITADEL
CAPITAL MANAGEMENT GROUP INC.,
Respondents.

On Appeal to the
United States Court of Appeals
for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

CITATION TO OPINIONS AND ORDERS ENTERED IN THE CASE

The published Opinion of the United States Court of Appeals for the Ninth Circuit appears in Appendix A to this Petition. The order, findings of fact, judgment and other related orders of the District Court granting Respondent's motion for summary judgment appear in Appendices B & C to this Petition.

While not attached as an appendix to the instant Petition, the decision in *SEC v. J.T. Wallenbrock & Assoc.*, 313 F.3d 532, 540 (9th Cir.2002) and

SEC v. J.T. Wallenbrock & Assoc., 440 F.3d 1109 (9th Cir.2006) are relevant to an analysis of this Petition.

STATEMENT OF JURISDICTIONAL BASIS

Title 28, U.S.C. § 1254, provides in part:

> "Cases in the court of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon petition of any party to any civil or criminal case, before or after rendition of judgment or decree [. . .]"

CONSTITUTIONAL OR OTHER PROVISIONS INVOLVED IN CASE

UNITED STATES CONSTITUTION, Amendment Fourteen, Section 1, in relevant part, states:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

With regard to jurisdiction over claims relating to securities law claims, 15 U.S.C. § 78aa states:

> "The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this chapter or the rules and regula

> tions thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by this chapter or the rules and regulations thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by this chapter or rules and regulations thereunder, or to enjoin any violation of such chapter or rules and regulations, may be brought in any such district or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, 1292, and 1294 of title 28. No costs shall be assessed for or against the Commission in any proceeding under this chapter brought by or against it in the Supreme Court or such other courts."

With respect to ancillary jurisdiction over state claims, 28 U.S.C. § 1367 states:

> (a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall

include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily

dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

(e) As used in this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

STATEMENT OF THE CASE

This case involves a securities investor and his elderly mother who became part of what was known as the "Wallenbrock scheme," which took in thousands of innocent investors from a number of states across the nation. The fact that Petitioner was "innocent" is not disputed by any party nor the Court of Appeals. *Donell v. Kowell* (9th Cir.2008) 533 F.3d 762, at 766, 771 fn.3.

Fairness and a need for investment markets stability demand that any U.S. investor ought to be able to know what uniform statutes of limitation apply to any case that they might bring against an issuer of securities for fraud or other misfeasance. Conversely, innocent or "good faith" investors also ought to know whether or not they may be held liable for any alleged wrongdoing of the issuer and what limitations period might apply should a receiver be appointed after the issuer is found to have committed fraud.

However, the Ninth Circuit has left innocent investors with uncertainty as to which state laws might be used against them should a disgorgement claim be made with respect to previously held securities.

Knowing what one might be held liable for is a fundamental component of Due Process.

This Court's determination of the issues presented in this case will have long lasting effects on whether, and to what extent, innocent investors might be held liable to other investors through a receiver's disgorgement claims. Given current market conditions, the floodgates of litigation will be likely opened with respect to the recent bail-outs of Lehman Brothers, AIG, Washington Mutual, and other large companies where management personnel and good faith investors may have received profits from the transfer of shares prior to the recent Wall Street disaster.

The current state of the law in the Ninth Circuit and other circuits is that investors have to guess at which limitations period or federal common law may apply to them should a receiver decide to pursue fraudulent transfer theories of recovery against them in an effort to make whole any investors who may have lost money. Indeed, the Court of Appeals noted that aspects of the process may be unfair, but proceeded to allow unmitigated damages/disgorgement against Petitioner anyway. *Donell v. Kowell*, 533 F.3d 762, 779 (9th Cir.2008).

Moreover, the Ninth Circuit apparently does not believe that this Court's decision in *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350 (1991), was intended to provide the type of uniformity which ensures equal and predictable treatment of all securities investors. *Donell* at 775, fn. 6. Judicial economy as to the foreseeable flood of future investment litigation is also a compelling reason to review the decision below.

This Court's decision in *Lampf* was intended to move market participants toward a uniformity of law that would avoid inconsistent applications of limitations periods. With respect to the situation faced by Petitioner and thousands of other investors, there is a need for conflict of law preemption in order to maintain market stability and a sense of uniformity of law for both investors and investment firms.

A lack of inconsistency creates *Erie* Doctrine and other legal problems of a constitutional dimension. Guahar Naheem, The Application of Federal Common Law to Overcome Conflicting State Laws in the Supplemental Disgorgement Proceedings of an SEC Appointed Receiver, Seton Hall Circuit Review, Vol. 3, No. 1, pp. 32-70 (2006). Anthony Michael Sabino, A Statutory Beacon or a Relighted Lampf? The Constitutional Crisis of the New Limitary Period for Federal Securities Law Actions, 28 TULSA L.J. (1992). Without guidance from this Court, investors face the risk that they may be sued under varying state limitations periods and have to guess at when and whether they will be liable for an investment firm's past fraud.

Lastly, the lower court opinion creates a quagmire of concern with respect to the measurement of restitution or disgorgement of past investment gains. Specifically, an innocent investor's past taxes for capital gains may not be refundable, interest may have been paid on monies borrowed to make an investment, and/or legal fees or costs may be incurred in defending against the receiver. Under the Ninth Circuit's reasoning, none of these facts matter even if the investor is left upside down on his/her "gains." *Kowell*, 533 F.3d 762, at 776, 778-799.

At a minimum, Due Process and fairness suggest that no receiver ought to be able to recover more than any good faith investor's actual or true net "profits" from unknowing participation in investments later shown to be tainted with fraud. There is no known decision, other than the Ninth Circuit's opinion herein, addressing this issue with respect to disgorgement actions. This Court's review is justified because the Ninth Circuit's novel and unfair decision affects tens of thousands of investors.

ARGUMENT FOR REVIEW

I. DUE PROCESS REQUIRES UNIFORMITY OF LAW WITH RESPECT TO INTERSTATE SECURITIES TRANSACTIONS WHERE RECOVERY IS SOUGHT AGAINST INNOCENT INVESTORS WHO MAY HAVE MADE PREVIOUS PROFITS ON THE AFFECTED SECURITIES

Generally speaking, Due Process fundamentally requires that all persons be on notice of the laws and consequences of any proposed action before they may be held to account civilly or otherwise. *West Covina v. Perkins*, 525 U.S. 234 (1999); UNITED STATES CONSTITUTION, amends. V and XIV. If the Ninth Circuit's decision is left standing, investors are left to wonder which state laws may be used against them to disgorge perceived gains made on tainted securities.

The basic facts concerning the Wallenbrock scheme were discussed in *SEC v. J.T. Wallenbrock,* 313 F.3d 532, 540 (9th Cir.2002). Important to the instant analysis is the fact that the Ninth Circuit ruled that "securities" were indeed involved in the scheme and subject to the applicability of Rule 10(b) of the Securities Exchange Act of 1934. *Id.* at 537.

After the investment was discovered to be fraudulent, the court-appointed receiver sued or threatened to sue any investor perceived to have made any gains on his/her original investment (whether the profit was real or not). *Id.* at 769. In order to effectuate a recovery against anyone who made money, the District Court's receiver had unbridled discretion to borrow limitations periods from California through ancillary jurisdiction. *Id.*

This borrowing of a state statute and its claims limitation period are consistent with finding a remedy where federal law is otherwise silent. *American Pipe & Construction Co. v. Utah*, 414 U.S. 538, 556 n. 27 (1974); *Auto Workers v. Hoosier Cardinal Corp.*, 383 U.S. 696, 703-705 (1966); *Holmberg v. Armbrecht*, 327 U.S. 392, 395 (1946).

In fact, this Court has addressed the issue of limitations periods and their applicability to securities-related claims on several occasions. *Lampf, supra*; *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 210-211 fn.29 (1976); *Herman & MacLean v. Huddleston*, 459 U.S. 375, 384 & fn. 18 (1983). However, Petitioner is unaware of any Supreme Court case directly addressing the lack of uniformity as to fraudulent transfers recovery from state to state with respect to securities. The Courts of Appeal have addressed whether fraudulent transfers theories might be applied to securities violations, but they have not addressed inconsistencies in state limitations periods or statutory language differences among the different states. *Donell* at 533 F.3d 762, at 767.

Lampf was a start to creating uniformity in securities-related litigation standards. However, while the essential reasoning of the case remains applicable to the present case, *Lampf* has essentially been

abrogated by Congress. *Teumer v. General Motors Corp.*, 34 F.3d 542, hn. 4 (7th Cir.1994).

While this case does not present with a straight 10b-5 claim by a private litigant against an investment company, the pragmatic issues are similar with respect to recovery by or against a class of innocent persons/shareholders through a receiver or private litigation.

In the present case, California's Uniform Fraudulent Transfers Act (UFTA) was the specific vehicle used to pursue Petitioner through the United States District Court. It could have just as easily been any other fraudulent transfers statute had Petitioner lived in a different state or territory. Also, had there been a bankruptcy trustee involved, then a different statute may have applied with differing limitations periods for any disgorgement claim brought against an innocent investor pursuant to 15 U.S.C. §§ 544, 548.

The uncertainty created by the possibility of changing state laws and conflicts with existing federal standards is not in the interest of maintaining a stable marketplace for investors, especially those who may already be leery of investing because of bad decisions made by major institutional investment companies. *See generally, Norris v. Wirtz*, 818 F.2d 1329, 1332 (7th Cir.), cert. denied, 484 U.S. 943 (1987) [discussion of the difficulty in evaluating differing state laws and describing inconsistency of state laws as a "tottering parapet of a ramshackle edifice"].

It is also noteworthy that Congress noted the difficulty in creating unresolved contingent liability claims with respect to securities. More specifically, it

was recognized that creating such liabilities may deter persons from seeking to serve on a corporation's board of directors. 78 Cong.Rec. 8200 (1934)(remarks of Senator Byrnes). Common sense further dictates that the existence of unknown potential liability for any investor, simply because they happen to invest in what appears to be a legitimate offering, will have a chilling effect on the markets as a whole.

The fact that the potential liability and length of exposure to liability could vary from state to state makes the decision to invest in initial public offerings or private offerings all the more difficult. Moreover, having a judgment against one for any variant of fraud, including a fraudulent transfer, is not good for innocent investors. Indeed, Petitioner herein had to be concerned about his high security clearance with the defense industry because of the actions against him by the court appointed receiver.

This Court has pointed out that, where operation of state limitations periods would frustrate the purposes of federal law, the United States will look to its own laws for a more suitable and fair limitations period. *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson, et al*, 501 U.S. 350, 355-356 (1991).

II. In Order to Preserve Judicial Economy and Predictability, State Fraudulent Transfers Laws Should be Preempted by a Uniform Period of Limitations for Recovery Claims by a Receiver

Petitioner claims that state law action ought to be preempted or otherwise prohibited by federal statutory and common law governing acts relating to "securities transactions." *See generally, Livid Holdings Ltd., v. Salomon Smith Barney, Inc.*, 416 F.3d

940, 946 (9th Cir.2005) [holding that federal law applies to 10-b5 violations and a one-year statute of limitations applies]; *Harrison v. Dean Witter Reynolds* 79 F.3d 609 (7th Cir.1996) [1-3 year statute of limitations].

"Federal preemption may be implied through "conflict preemption," when a state law actually conflicts with, or poses an obstacle to the accomplishment of the purposes of, a federal law, or "field preemption," when a federal law so thoroughly occupies a legislative field that there is no room for state action in that area" *Donell*, 533 F.3d 762, at 775, citing *Montalvo v. Spirit Airlines*, 508 F.3d 464, 470 (9th Cir.2007).

While Respondents strenuously claim that they may simply "borrow" state statutes to impose liability on investors, Petitioner contends that uniformity of law makes fundamental sense since investments securities are particularly attractive as a part of a retirement plan, regular investment plan, and the need for long-term stability is particularly important. Given that securities are covered by the Securities Exchange of Act of 1934 and have been determined by this Court and others to be subject to federal regulation, a uniform set of laws governing investment relations ought to be established. Indeed, uniformity of law is consistent with accomplishing the recognized purposes of weeding out fraud and protecting innocent investors. *See generally, Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985)[discussing private actions as a way to enforce the purposes of securities regulations].

In light of the common sense aspects of investing, it follows that having a uniform and shorter limitations period is consistent with good public policy. That is, investors should not be left wondering for four or

more years about their potential liability after a bad investment (even if the good faith investor made money).

III. The Measure of Disgorgement/ Restitution Ought to Be Uniform Against Interstate Securities Investors

The Ninth Circuit provides no authority or guidance in concluding that absolutely no offsets for costs of acquiring or holding investments ought to be allowed in assessing disgorgement amounts. Moreover, the Court also indicated that neither side could provide any existing common law guidance on this important issue. *Donell*, 533 U.S. 762, at 778-779.

In California, the entire purpose of the Uniform Fraudulent Transfers Act is to prevent debtors from placing their property beyond the reach of their creditors. Specifically, it is further intended to prevent the transfer of valuable assets of the debtor without an exchange of fair value. *Borgfeldt v. Curry* 25 Cal.App. 624, 144 P. 976 (1914); *Chichester v. Mason,* 43 Cal.App.2d 577, 111 P.2d 362 (1941).

It is critical to note that how one goes about assessing reasonable value is dependent on how liability operates under the UFTA. Specifically, liability under the UFTA presupposes a creditor, debtor/ transferor, and transferee to work properly and within its intended meaning. *Donell* at 533 F.3d 762, 774-775.

In such cases, the receiver is legally indistinguishable from the debtor (as receiver stepping in as a successor operator of the debtor business), and the investor transferee is also a creditor of the alleged debtor. UFTA, on its very face, does not cover this situation. *Donell*, 533 F.3d 762, at 774-775 [acknowl-

edging that all investors affected by fraud are coexisting tort-creditors]. Again, imposing liability under such conditions also creates unpredictability for investors and co-creditors who are involved in securities investments.

Failing to offset any taxes paid, other actual consideration given, and interest paid by an investor is inequitable.

The intent behind the Fraudulent Transfers Act, or other enforcement mechanisms, is simply not fulfilled by requiring the investor to pay back more money than he/she actually netted. Compare *California Civil Code* §§ 3439.04(a), 3439.04(b) to *Wallenbrock*, *supra* at 313 F.3d 536 [defining investor as someone having a secured interest for which money was paid - including those who invested in Wallenbrock]. Moreover, conceptual problems presented by federal common law and state statutory law underscores the fact that, for purposes of conflict or field preemption, California law has not supplemented nor clearly defined itself in light of existing federal securities laws. *Montalvo, supra* at 508 F.3d 470-471.

As such, the Ninth Circuit opinion leaves the investment community to wonder about what they might be held liable for in the event that investments go bad. This is an issue that affects Due Process just as much as the needs for a predictable limitations period and consistent enforcement mechanisms. Review is necessary to provide the constitutional solace to which all institutional and private investors are entitled.

CONCLUSION

It is respectfully requested that the Court grant the instant Petition.

Respectfully submitted,

RICHARD D. ACKERMAN *
ACKERMAN, COWLES & ASSOCIATES
29975 Technology Drive
Suite 101
Murrieta, CA 92563
(951) 308-6454

* Counsel of Record

Attorney for Petitioner

September 29, 2008